IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 13TH APRIL, 2007 / 23RD CHAITHRA, 1928

WP(C).No. 8982 of 2007(T)

PETITIONER:

P.T.ENTHEENKUTTY @ BAVA,
PILATHOTTATHIL HOUSE,
CHANGUVETTY, KOTTAKKAL.

BY ADV. SRI.K.I.MAYANKUTTY MATHER
SMT.S.AMINA

RESPONDENTS:

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1. REVENUE DIVISIONAL OFFICER, TIRUR.

2. DR.P.A.KABEER, CHANGUVETTY,
KOTTAKKAL.

3. KOTTAKKAL GRAMA PANCHAYATH,
KOTTAKKAL, MALAPPURAM
REP. BY ITS SECRETARY.

R1 BY GOVERNMENT PLEADER SRI. GIKKU JACOB
R2 BY ADV. SRI.T.K.SAIDALIKUTTY
SRI.P.A.MOHAMMED ASHROF
SRI.LAL K.JOSEPH
SRI.A.A.ZIYAD RAHMAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 13/04/2007, THE COURT ON 14/03/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF CERTIFICATE OF REGISTRATION ISSUED BY THE CONCERNED ASESSING AUTHORITY.

EXT.P2 TRUE COPY OF THE CURRENT CERTIFICATE.

EXT.P3 TRUE COPY OF COMPLAINT FILED BY THE PETITIONER AND OTHERS BEFORE R1.

EXT.P4 TRUE COPY OF NOTICE ISSUED BY THE SECRETARY OF KOTTAKKAL GRAMA PANCHAYAT TO THE PETITIONER.

EXT.P5 TRUE COPY OF REPLY SENT BY THE PETITIONER.

EXT.P6 TRUE COPY OF REPORT SUBMITTED BY THE VILLAGE OFFICER BEFORE THE 1ST RESPONDENT.

EXT.P7 TRUE COPY OF OBJECTION FILED BY THE PETITIONER.

EXT.P8 TRUE COPY OF STATEMENT OF THE PETITIONER.

EXT.P9 TRUE COPY OF STATEMENT OF 2ND RESPONDENT.

EXT.P10TRUECOPY OF THE FINAL ORDER PASSED BY THE 1ST RESPONDENT.

/TRUE COPY/

R. BASANT, J.

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W.P.C.No. 8982 of 2007 T

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Dated this the 13th day of April, 2007

JUDGMENT

The petitioner has come to this court aggrieved by Ext.P10 order passed by the Revenue Divisional Officer, Tirur. The short contention of the petitioner is that Ext.P10 is not an order contemplated under the Code of Criminal Procedure at all. It violates all norms and cannons of law. The Revenue Divisional Officer, though he functions as the Sub Divisional Magistrate also, could not have passed an order like Ext.P10 under the powers available to him as a Sub Divisional Magistrate under Chapter XB Cr.P.C.

2. I totally agree with the learned counsel for the petitioner. Under Chapter XB, proceedings have to commence with a conditional order passed under Section 133 Cr.P.C. In an appropriate case, of course, an injunction pending enquiry can be passed by the Sub Divisional Magistrate invoking the powers under Section 142 Cr.P.C. In the instant case no conditional order whatsoever was passed. Ext.P10 describes itself as a “stop memo”. I am unable to find any legal provision under which an order like Ext.P10 can be

sustained. The learned counsel for the respondent only submits that notwithstanding the fact that there is a legal defect in passing Ext.P10 order this Court may make it clear that the option of the Sub Divisional Magistrate to proceed in accordance with Chapter XB will remain unfettered even if this Court were to set aside Ext.P10.

3. I shall carefully avoid any expression of opinion on merits about the dispute in question as to whether the running of the business by the petitioner amounts to any public nuisance or whether it deserves to be abated by invoking the powers under Chapter XB. The fact remains that Ext.P10 order is indefensible under the provisions of Chapter XB. The same deserves to be set aside. If there are circumstances justifying initiation of proceedings under Chapter XB and passing of a conditional order under Section 133 Cr.P.C. and an order of injunction under Section 142 Cr.P.C., the setting aside of Ext.P10 will not in any way fetter the powers of the Sub Divisional Magistrate to resort to such provision and passing appropriate orders.

4. With the above observations this writ petition is allowed and Ext.P10 order is set aside. Needless to say, the grievance of the second

respondent expressed in Ext.P3 application must be considered and appropriate action taken by the Sub Divisional Magistrate expeditiously.

(R. BASANT)
Judge

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